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*** CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES ***
*** FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH ***
*** JUNE 2, 2011 ***

Title 23 Public Utilities and Regulated Industries
Subtitle 2. Financial Institutions And Securities
Chapter 40 Sale of Prepaid Funeral Benefits

A.C.A. § 23-40-111 (2011)

23-40-111. Issuance of permit -- Cancellation or denial.

(a) (1) The Insurance Commissioner may issue a permit conditioned upon satisfactory completion of all requirements of this chapter prior to the applicant's offering for sale or selling prepaid funeral benefits.

(2) In addition, prior to the issuance of either an initial or renewal permit, the applicant must be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.

(b) (1) The commissioner may deny an initial application for failure to meet the requirements of subsection (a) of this section or for the applicant's failure to comply with any material provision of this chapter or any valid rule and regulation that the commissioner has prescribed, after:

(A) Thirty (30) days' notice to the applicant or permittee setting forth the grounds for the cancellation, the denial of application for initial permit, or refusal to renew; and

(B) A hearing if the applicant or permittee requests a hearing.

(2) After notice to the licensee and after a hearing, the commissioner may suspend any permit under this chapter for up to thirty-six (36) months or may revoke or refuse to continue any permit under this chapter if the commissioner finds that:

(A) The licensee has failed to comply with any material provision of this chapter or any valid rule and regulation or order that the commissioner has prescribed;

(B) The licensee has obtained its permit through misrepresentation or fraud;

(C) An officer, director, or owner of the licensee has improperly withheld, misappropriated, or converted any moneys or properties received in the course of prepaid funeral contracts business to the licensee's own use;

(D) An officer, director, or owner of the licensee has been found to have committed any unfair trade practice or fraud during the course of prepaid funeral contracts business;

(E) The licensee has failed to provide a written response after receipt of a written inquiry from the commissioner or his or her representative as to transactions under the license within thirty (30) days after receipt thereof unless the commissioner or his or her representative knowingly waives the timely response requirement in writing;

(F) The licensee has refused to be examined or produce any of his or her accounts, records, and files for examination or has failed to cooperate with the commissioner in an investigation when requested by the commissioner or his or her representative; or

requested by the commissioner or his or her representative; or

(G) The licensee is in violation of any grounds under § 23-40-114(a) sufficient to subject the organization to delinquency proceedings.

(3) (A) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation.

(B) If the commissioner finds willful misconduct or willful violation on the part of the licensee, the commissioner may impose upon the licensee an administrative penalty of up to five thousand dollars (\$5,000) per violation.

(C) In addition to either penalty imposed under subdivision (b)(3)(A) or (B) of this section, the commissioner may also order restitution of actual losses to affected persons.

(4) If the commissioner finds in his or her order that the public health, safety, or welfare imperatively requires emergency action, the commissioner may summarily suspend any license issued by him or her but shall promptly hold an administrative hearing regarding the suspension.

(5) (A) Upon notice and hearing, if the commissioner finds that the licensee has violated a provision of the prepaid funeral benefits laws of this state or any rule, regulation, or order of the commissioner and that the licensee has previously violated provisions of the prepaid funeral benefits laws of this state or any rule, regulation, or order of the commissioner, the commissioner may:

(i) Take judicial notice of previous orders against the licensee; and

(ii) Enhance or increase the penalties ordered in the current proceeding against the licensee.

(B) The commissioner may enter an order under subdivision (b)(5)(A) of this section by:

(i) The commissioner's own order; or

(ii) An order entered with the consent of the parties.

(C) The commissioner shall incorporate a finding under subdivision (b)(5)(A) of this section in any order issued under this subdivision (b)(5).

(c) Any person aggrieved by the action of the commissioner may appeal therefrom to any state court of competent jurisdiction.

HISTORY: Acts 1985, No. 156, §§ 5, 7; A.S.A. 1947, §§ 67-1717, 67-1719; Acts 1995, No. 852, § 4; 1999, No. 347, § 1; 2003, No. 987, § 1.